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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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John Zimmerman

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS

P.O. BOX 3001

BRIARCLIFF MANOR, NY 10510

EXAMINER

BROWN, RUEBEN M

ART UNIT

PAPER NUMBER

2623

MAIL DATE

DELIVERY MODE

09/18/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/815,856	Applicant(s) ZIMMERMAN, JOHN	
	Examiner REUBEN M. BROWN	Art Unit 2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 04 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-9,11-18 and 21-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-9,11-18 and 21-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/4/2008 has been entered.

Response to Arguments

2. Applicant's arguments with respect to the claims have been considered but are not persuasive.

On page 9, applicant continues a previous argument that, in Kim, since at least a portion of the image of the avatar is typically owned by the organization, a user would naturally think that any recommendation made by the avatar, is made on behalf of the organization, but the celerity personally himself or herself. In response to examiner's discussion regarding this argument in the Advisory Action, mailed 7/10/2008, applicant responds, "Notwithstanding this argument, applicant points out that one of the claimed features is to provide an appearance that

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the celebrity is making a personal recommendation to the user. The teaching of Kim fails to create such an appearance.

Examiner respectfully disagrees, and points out that this limitation of, '*create an appearance*' is indefinite, since this appearance could be interpreted differently by different viewers. The claim merely requires, 'displaying the image of the celebrity to create an appearance...'. It is asserted that by merely displaying an image of a celebrity, will not create the appearance that the celebrity is making the personal recommendation to all users. For instance, some users would probably interpret the image as an endorsement, either of the recommendation itself or the service provider that actually makes the recommendation. Secondly, it would clearly depend on which image of the celebrity was used, and how it was presented.

Therefore, the question becomes, what has to happen to the appearance of the celebrity that would unambiguously be interpreted that the celebrity is indeed making a personal recommendation. Well, for instance, if the celebrity mentions the viewer by name and said something to the effect, "<Sarah>, I really believe that you will enjoy these movies, because they are very similar to what you told me were your favorites." It is submitted that such a colloquy is well within the scope of Kim, since the avatar can be programmed to say anything and/or take on any personality trait needed. Such a colloquy and any appearance enhancers such as lighting, music, etc. are merely programmable accompaniments that are well within the scope of anticipated by Kim, see [0065].

Furthermore, <Sarah> never *really* told the celebrity her favorite movies, but instead reported them in a questionnaire or survey. Nevertheless, by being personable and appearing that he/she has stake in the recommendation process, the celebrity could appear to be making a personal recommendation. Again, these functions are details that can be resolved by programming in Kim that causes the avatar to make a personal appeal to the viewer.

As for the limitation of 'reporting affirmatively the profiled celebrity' (claim 1), 'lifestyle recommendation device affirmatively announcing by the profiled celebrity the recommendation to the user...' (claims 8 & 15). Again, this reads on creating an audio tape of the celebrity reading a variety of scripts related to reporting a recommendation, and playing the audio tape during the recommendation process. Even if this technique was beyond the scope of Kim, it was well known in the art at the time the invention was made to create an audio tape of any person and play the tape when appropriate.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-2, 4-9 & 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herz, (U.S. Pat # 5,758,257), in view of Shapira, (U.S. Pat # 7,058,806) and Kim, (U.S. PG-PUB 2003/0156134).

Considering claim 1, the claimed method for making a recommendation in a lifestyle recommendation machine, the machine comprising:

‘providing a celebrity profile of a celebrity to a user’, is met by the teachings of Herz, col. 49, lines 1-6, which teaches that “each customer could adopt the customer profiles of other individuals or programs such as ‘celebrity’ profiles including the viewing preferences of different celebrities”.

‘making a recommendation to the user for an item, service, and/or event based on the celebrity profile’, reads on the operation of the agreement matrix which creates a list of recommended programs for a customer based on the profile for the customer, which in this case, would be the instant celebrity profile adopted by the customer, col. 9, lines 61-67 thru col. 10, lines 1-20; col. 47, lines 21-50. It is pointed out that the claimed, *‘making the recommendation’* corresponds with the creating of the list of recommended programs using the agreement matrix.

‘reporting the recommendation to the user’, reads on the disclosure of Herz of **presenting** the most desirable video programs one or more ‘virtual channels’ customized for the customer”, col. 47, lines 35-42. Also, Herz at col. 45, lines 37-50 discloses, “An EPG or display

guide 914 listing the available selections **is provided**. In accordance with the invention, the **display guide** is either **modified** to include fields for virtual channels, or else the recommended programming is highlighted in an obvious manner”, emphasis added.

As for the additionally amended claimed, *‘reporting...affirmatively by the profiled celebrity... the recommendation to the user...through an image of the celebrity while simultaneously displaying the image of the celebrity’*, Herz does not discuss any images associated with a celebrity or any other profile. Nevertheless Shapira is in the same field of endeavor and discloses associating an image with a profile, see Fig. 4. Also Shapira goes on to teach a system that matches customers with profiles of customers with similar interests, col. 9, lines 1-45. It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify Herz with the teachings of Shapira associating an image with each profile, at least for the desirable benefit of giving the user a visual confirmation of the instant profile. Thus the combination of Herz and Shapira provides for presenting a list of recommended programs to a customer based on a celebrity profile, while displaying an image associated with the instant celebrity.

Regarding the newly added feature, *‘to create an appearance during the reporting that the celebrity is making the recommendation to the user’*, Shapira does not discuss reporting the recommendation from such a vantage point. Nevertheless, Kim provides a teaching of an organizational avatar that represents a celebrated entity, i.e., a celebrity. Kim goes on to teach that the organizational avatar interacts with users/customers possibly via the Internet, and that

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one of the features of the organizational avatar is that it may recommend menu items to customers, Para [0084], which corresponds the claimed features of, '*making and reporting a recommendation*'. It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify the combination of Herz & Shapira with the feature reporting a recommendation as though it is made by the celebrity, at least for the benefit providing a more personable interaction for the customer, as taught by Kim, Para [0019,0030].

Therefore, the additional limitation of, '*reporting affirmatively...*', is met by disclosure of Kim that the avatar makes a recommendation, Para [0084]. Affirmatively is broad enough to read on the avatar actually making the recommendation.

Considering claim 2, the recommendation is for TV programming in Herz.

Considering claims 4 & 11, as for the '*recommending comprises playing accompanying audio*', Shapira teaches that the recommendation announcement may include a voicemail, col. 4, lines 60-67. Shapira also discloses that audio/visual information may be included in the recommendation, col. 11, lines 1-12. The visual including a video would have been an obvious modification, in order to provide more information about the client-user that can be observed in a still image. Also see Kim, Fig. 4A; 5A; 5E; Para [0063; 0067-0068].

Considering claims 5 & 12, Shapira discloses that each profile may include an associated still image, (Fig. 4; col. 8, lines 63-67 thru col. 9, lines 1-10). Also see Kim, Fig. 4A; 5A; 5E; Para [0063; 0067-0068].

Considering claims 6 & 13, the claimed '*textual message*' reads on any headline or title in Herz or Shapira, which indicates to the customer that they are receiving recommendation information. However, to the extent that Herz does not explicitly show a textual message which announces the recommendation, Official Notice is taken that at the time the invention was made, proving a headline, heading or title was well known in the art. It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify Herz using a headline, heading or title, at least for the desirable advantage of more explicitly indicating to the customer that a recommendation is/will be displayed to the screen or is available.

Considering claims 7 & 14, see Shapira col. 11, lines 1-10.

Considering claim 8, the claimed elements of a lifestyle recommendation device that correspond with subject mentioned above in claim 1, are likewise treated. As for the claimed, '*means for obtaining a celebrity profile form a external source ad storing the celebrity profile on the lifestyle recommendation device*', Herz teaches that the customer may choose celebrity profile, but does not explicitly teach that the celebrity profile is stored at the customer's STT. Nevertheless, Herz teaches that multiple customer profiles may be stored at the customer's STT (col. 25, lines 10-15; col. 45, lines 10-67) and that information need to generate the agreement

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matrix may be downloaded from the headend. It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify Herz with the feature of downloading the celebrity profile and storing at the customer, at least in order to take advantage of the one-way features of Herz, wherein the agreement matrix is generated at the instant customer's STB, col. 40, lines 22-67 thru col. 41, lines 1-18.

Therefore, the additional limitation of, '*reporting affirmatively...*', is met by disclosure of Kim that the avatar makes a recommendation, Para [0084]. Affirmatively is broad enough to read on the avatar actually making the recommendation. The claimed '*profiled celebrity*' reads on using the celebrity chosen from Herz, col. 49, lines 1-5.

Considering claim 9, the claimed element reads on Herz, col. 46, lines 24-60.

Considering claim 15, the claimed program storage device readable by machine tangibly embodying a program of instructions executable by a machine to perform the method steps as discussed in the rejection of claim 8, reads on disclosure of Herz, col. 40, lines 42-60; col. 46, lines 24-60. Moreover, both Shapira & Kim are computer based inventions, and thus operate using a program storage device, tangibly embodying a program of instructions executable by the machine.

Therefore, the additional limitation of, '*reporting affirmatively...*', is met by disclosure of Kim that the avatar makes a recommendation, Para [0084]. Affirmatively is broad enough to read

on the avatar actually making the recommendation. The claimed '*profiled celebrity*' reads on using the celebrity chosen from Herz, col. 49, lines 1-5.

Considering claim 16, the claimed program product embodied in a computer-readable for making a recommendation in a lifestyle machine as discussed in claim 8, reads on the software disclosed in Herz, col. 40, lines 42-60; col. 46, lines 24-60.

5. Claims 17-18 & 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herz, in view of Cook, (U.S. PG-PUB 2003/0193504).

Considering claim 17, the claimed method for making a recommendation in a lifestyle recommendation machine, the machine comprising:

Herz, col. 49, lines 1-6, teaches that "each customer could adopt the customer profiles of other individuals or programs such as '*celebrity*' profiles including the viewing preferences of different celebrities".

However, Herz does not discuss whether a '*synthetic celebrity profile*' may be created. Nevertheless Massey is directed to creating virtual actors, (Page 4, lines 26-27; Page 5, lines 12-20). It would have been obvious for one ordinary skill in the art at the time the invention was made, to modify Herz with the feature of creating a virtual actor, which reads on a 'synthetic

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celebrity profile' for the advantage creating a virtual person that can be programmed to do or say whatever desired by its creator(s).

'making a recommendation to the user for an item, service, and/or event based on the synthetic celebrity profile or fictitious character', reads on the combination Massey & Herz operation of the agreement matrix which creates a list of recommended programs for a customer based on the profile for the customer, which in this case, would be the instant celebrity profile adopted by the customer, col. 9, lines 61-67 thru col. 10, lines 1-20; col. 47, lines 21-50. It is pointed out that the claimed, *'making the recommendation'* corresponds with the creating of the list of recommended programs using the agreement matrix.

'affirmatively reporting by the fictitious character the recommendation to the user through the fictitious character to create an appearance that the fictitious character is making a personal recommendation to the user', reads on the disclosure of Herz of **presenting** the most desirable video programs one or more 'virtual channels' customized for the customer", col. 47, lines 35-42 & Massey. Also, Herz at col. 45, lines 37-50 discloses, "An EPG or display guide 914 listing the available selections **is provided**. In accordance with the invention, the **display guide** is either **modified** to include fields for virtual channels, or else the recommended programming is highlighted in an obvious manner", emphasis added.

The virtual actor in Massey and its background and sound can be programmed to present any illusion that is within the known of animation control, that is best suited to get a message to the viewer.

Considering claim 18, Herz teaches that the customer may choose celebrity profile, but does not explicitly teach that the celebrity profile is stored at the customer's STT. Nevertheless, Herz teaches that multiple customer profiles may be stored at the customer's STT (col. 25, lines 10-15; col. 45, lines 10-67) and that information need to generate the agreement matrix may be downloaded from the headend. It would have been an obvious modification of Herz, then, by downloading the celebrity profile and storing at the customer site, at least in order to take advantage of the one-way features of Herz (thereby obviating the requirements of a two-way system), wherein the agreement matrix is generated at the instant customer's STB, col. 40, lines 22-67 thru col. 41, lines 1-18.

Considering claims 23, the claimed '*textual message*' would read on any headline or title in Herz, which indicates to the customer that they are receiving recommendation information. However, to the extent that Herz does not explicitly show a textual message which announces the recommendation, Official Notice is taken that at the time the invention was made, providing a headline, heading or title was well known in the art. It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify Herz using a headline, heading or title, at least for the desirable advantage of more explicitly indicating to the customer that a recommendation is/will be displayed on the screen.

6. Claims 21-22 & 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herz & Massey, and further in view of Shapira.

Considering claims 21 & 24, Herz does not discuss the feature of accompanying audio with a recommendation. Nevertheless Shapira, which is in the same field of endeavor, teaches that when a profile is matched, the matched or recommended profile may be presented with accompanying audio, col. 11, lines 1-15. It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify Herz with the feature of adding accompanying audio to a recommendation, at least for the benefit of catching the customer's attention.

Considering claims 22 & 25-26, Herz does not discuss any images associated with a celebrity or any other profile. Nevertheless Shapira is in the same field of endeavor and discloses associating an image with a profile, see Fig. 4. Also Shapira goes on to teach a system that matches customers with profiles of customers with similar interests, col. 9, lines 1-45. It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify Herz with the teachings of Shapira associating an image with each profile, at least for the desirable benefit of giving the user a visual confirmation of the instant profile. Thus the combination of Herz and Shapira provides for presenting a list of recommended programs to a customer based on a celebrity profile, while displaying an image associated with the instant celebrity.

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Any response to this action should be mailed to:

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or faxed to:

(571) 273-8300, (for formal communications intended for entry)

Or:

(571) 273-7290 (for informal or draft communications, please label
"PROPOSED" or "DRAFT")

Any inquiry concerning this communication or earlier communications from the examiner should be directed to REUBEN M. BROWN M. Brown whose telephone number is (571) 272-7290. The examiner can normally be reached on M-F(8:30-6:00), First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Kelley can be reached on (571) 272-7331. The fax phone numbers for the organization where this application or proceeding is assigned is (571) 273-8300 for regular communications and After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Reuben M. Brown/
Patent Examiner, Art Unit 2623